IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 199 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAUHAN PURANKUMAR SONAJI (KOLI)

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioner No. 1

MR HL JANI APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/12/2001

ORAL JUDGEMENT

This Revision Application preferred under Sections 397 and 401 CrPC arises from the judgment and order dated 11th April, 2001 passed by the learned Judicial Magistrate, First Class, Nakhatrana [Kachchha]

below Application Exh. 15 in Criminal Case No. 162 of 1999. The petitioner before this Court is the accused in the said criminal case.

It appears that the petitioner was a Pakistani national who had entered the Indian territories as a refugee in the year 1971, during Indo-Pakistan war. Since then, the petitioner has settled in India and has also acquired the citizenship of India. At the relevant time, the petitioner was a minor. The petitioner claims that he belongs to Koli community. The Koli community of Kachchha District is declared to be a Scheduled Tribe under the Scheduled Castes & Scheduled Tribes [Amendment] Act, 1976. Accordingly, the petitioner obtained a certificate of being scheduled tribe person from the concerned Mamlatdar. On the strength of the said certificate, the petitioner also secured a Government job. However, on inquiry with the Central Government, it was advised that only those Kolis of Kachchha District who were residents of the said district in the year 1950 have been recognized as Scheduled Tribe persons. The persons who have settled in Kachchha District, thereafter, they though may belong to Koli community, cannot be said to be scheduled tribe persons under the above referred Act of 1976. Pursuant to the said advice, the certificate of being a scheduled tribe person given to the petitioner has been cancelled by the order of the Collector, District-Kachchha. Nonetheless, a criminal complaint has also been lodged against the petitioner in the court of learned Judicial Magistrate, First Class, Nakhatrana. It is alleged that the petitioner has obtained the certificate of being scheduled tribe person wrongly and has thus committed an offence punishable under section 420 IPC. The said complaint has been registered as Criminal Case No. 162 of 1999. The petitioner made Application Exh. 15 for discharge on the ground that no offence has been made out against the petitioner. The said application has been rejected by the learned Magistrate under the impugned order dated 11th April, 2001. Therefore, the present Revision Application.

The learned Magistrate has observed that no materials have been brought forth on the records and it shall be the matter of evidence whether the petitioner had procured the certificate of being a scheduled tribe person by misrepresentation. Unless the application made by the petitioner is brought on the records of the matter, the malicious intention of the petitioner cannot be proved.

I agree with the learned Magistrate in so far as it is held that unless the application is brought on the records, the malicious intention on the part of the petitioner cannot be proved. However, the petitioner cannot be prosecuted merely on apprehension or belief that he has procured the certificate in question wrongly/illegally. It is for the prosecution to bring forth all the materials to prima facie establish the guilt on the part of the petitioner. As the record stands now, no material has been brought forth to show even prima facie that the petitioner was guilty of misrepresentation or that the application had been made by the petitioner with a view to cheating the State. Unless a prima facie case is made out against the petitioner, the learned Judge could not have issued process against the petitioner. A bare statement that the petitioner had procured the certificate wrongly is not sufficient to initiate prosecution against the petitioner. There being no other evidence, the process issued against the petitioner requires to be dropped and the petitioner deserves discharge.

For the above reasons, the Revision Application is allowed. The process issued against the petitioner in Criminal Case No. 162 of 1999 pending in the Court of learned Judicial Magistrate, First Class, Nakhatrana is quashed and set-aside. The petitioner is discharged. Rule is made absolute.

[Ms. R.M Doshit, J.]

Prakash*